WORKERS' COMPENSATION ACT REVIEW
Stakeholder Advisory Group/Public Consultation

Fireside Room North, Yukon Inn, Whitehorse, Yukon
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Appeals Process, Legal and Policy Issues

PANEL:	Patrick Rouble	Chair
	Ivan Dechkoff	Member
	Michael Travill	Member
PRESENT:	Douglas Rody	Yukon Federation of Labour
	Deborah McNevin	Public Service Commission
	Derek Holmes	Public Service Commission
	Mark Hill	YWCHSB
	Valerie Royle	YWCHSB
	Craig Tuton	YWCHSB - Board of Directors
	Laurie Butterworth	Yukon Employees' Union
	Rick Karp	Whitehorse Chamber of Commerce
	Ed Sager	Whitehorse Chamber of Commerce
	Sandy Babcock	Yukon Chamber of Commerce & Yukon Tourism Association
	Robbie King	Injured Workers' Alliance

(The meeting was called to order at 1:05 p.m.)

Mr. Rouble: If we could come to order, then, please. Again, I'd like to welcome you to another *Workers' Compensation Act* Review Panel meeting. My name is Patrick Rouble; I'm joined with Mike Travill and Ivan Dechkoff, the other members of the Panel. I think I can dispense with the long-winded formal introduction, as you folks have heard it a couple times already. If anyone does want to hear that, they can go and read it off of the transcripts that are available on the website.

The topic for discussion today is "Appeals Process, Legal and Policy Issues." These are Issues 1 through 24. In order to encourage the process to go along, I would ask that we stick on the items that have been identified for discussion today. We've had this discussion before, about how the Panel does recognize that there is a considerable amount of inter-connectedness in the Act; that not always do issues fall into neat categories, but there is some overlap and continuation of one issue to another. We certainly appreciate that.

However, in order to facilitate these kinds of discussions, and the review, we have added some structure to it, and do plan on going through things issue by issue, as they've been outlined in the latest document.

So, the first issue, under the heading of "Appeals Process, Legal and Policy Issues", Issue #1, is the "Process to lodge administrative complaints." Does anyone wish to comment?

Ms Babcock: Yukon Chamber is confident that there are critical processes in place to address complaints, and we don't feel there is any need to change the legislation.

Mr. Sager: Whitehorse Chamber concurs with that.

Mr. Rody: We feel pretty much the same. I guess the only concern, as expressed by Robbie, is the time, sometimes… which is not something that needs legislative change, so… no change to the legislation.

Mr. Rouble: Any other comments?

Mr. Tuton: We agree.

Mr. Rouble: Okay, without further comment, we'll continue on with Issue #2, "Recourse to review Worker's Advocate decisions under s. 13(3)." I should add, Mr. Travill, who, when he isn't a member of the Act Review Panel, is also employed as the Workers' Advocate. I know that this might be a sensitive issue to make comments in front of him… we are going to put the transcript of these comments into the public forum, by putting them on line… is there anyone that feels Mr. Travill should excuse himself from our meeting, now, while we discuss this?

Mr. Rody: Doesn't matter to me.

Mr. Rouble: Okay, thank you. Are there any comments on this issue?

Mr. Rody: We don't see a need for any change to the legislation. It's quite specific that the Workers' Advocate office has to give written reasons for not taking a claim.

Perhaps there's a need, though, to insure that, when the Workers' Advocate office does refuse, and gives written reasons, that there is an indication that, A, the worker can still pursue their appeal; and, also, that there are other avenues to take the complaint, whether it's to the minister, to the ombudsman's office, that sort of thing. I don't know if the Workers' Advocate office does that now, but it should be made clear. It might even be helpful if the Workers' Comp. Board had a flow chart of how that sort of stuff goes.

Mr. Rouble: Any other comments?

Ms Babcock: Yukon Chamber supports that.

Mr. Sager: As does the Whitehorse Chamber.

Mr. Tuton: As do we.

Mr. Rouble: Any other comments? Hearing none, we'll continue on with Issue #3, "Decisions must be in keeping with Act and policy."

Mr. Rody: We don't see a need for any change. Personally, I don't see a need for this to be here. If somebody wasn't following part of the Act, I don't see what having a section in the Act, saying you must follow the Act… what good that would do. So we don't see any need for any change at all.

Mr. Sager: We agree.

Ms Babcock: Yukon Chamber agrees.

Mr. Tuton; As do we.

Mr. Rouble: Any other comments? Issue #4, "Processes for dealing with new evidence."

Mr. Rody: When we first encountered this, our concern was that this would end up being an avenue which, as your researcher indicates, would be an endless way to keep thwarting decisions of the Appeal Tribunal, basically. Since then, in conversations we've had with the Board, that's not, quite frankly, what the Board is looking for. Maybe I can ask Valerie to elaborate on that.

When new evidence comes up, it may be to the workers' advantage to bring that to the Board's immediate attention; that things could be resolved sooner than going to an appeal.

Ms Royle: And that is the issue. What tends to happen is, often times, not necessarily with the Workers' Advocate office because, when new evidence comes in, they will forward it on, but not every worker uses the Workers' Advocate office. And what tends to happen is, at the Appeal Tribunal, new evidence gets put in that the Board hasn't seen. And what the Board is looking for, in discussion with stakeholders, is broad legislation that says the Board deals with new evidence in the first instance; and with a policy that will allow for the appeal process not to be delayed because of that new evidence.

For example, if a worker has an appeal hearing scheduled for three months out, in the meantime new evidence comes in, it wouldn't cancel that appeal. At least the Board would have an opportunity to deal with the new evidence, and then that could become part of the same appeal process. So not to put the worker into a continuous appeal/evidence loop, is what we're suggesting we would need.

Mr. Rody: So we are more than willing to look at that issue with the Board, whatever the wording is we don't know. But, basically, we're satisfied that what's described in the second last paragraph on page 87, that that is not what the Board's intent would be when it comes to new evidence. We don't have that concern any more.

Mr. Rouble: Does anyone else wish to comment?

Ms Babcock: Yukon Chamber would support the inclusion of new evidence in the legislation, and we would like to see that supported by a very specific Board policy.

Mr. Sager: Whitehorse Chamber agrees.

Mr. Tuton; As do we.

Mr. Rouble: Any other comments? Mr. King.

Mr. King: Before we go on to Issue #5, I'd like to revisit number 3.

Mr. Rouble: I should add, are there any other comments for Issue #4? Okay, we'll go back to 3.

Mr. King: In the options, when they talk about decisions… decisions are handed down by adjudicators, hearing officers and the Appeal Tribunal. So, when we're talking about decisions, that's got to be decisions by everyone in that process… which leads to option number 2, "Amend the legislation to make it clear that in addition to the Appeal Tribunal, all board officers (and that would include the hearing officer) and employees are bound by policies of the Board."

I've come across a lot of times where a section of the Act is interpreted in a certain way by administration, and it's been interpreted differently by a different body, so it's tough to enforce this in keeping with the Act, because the decision-maker can say, Well, I'm abiding by this section of the Act because I interpret it this way.

There has to be some sort of way to perhaps come to an agreement, or standardize it, or something, the understanding of the section of the Act. I'm sure

Mr. Travill has come across that a number of times in his business, that it's interpreted this way, but it could be interpreted this way. Maybe the adjudicator interpreted it this way, and that's the way it's going to be, and "Here's your answer based on my interpretation."

So, I think it's a pretty touchy issue here, in the sense that you make a decision in keeping with the Act… well, basically, you're making your decision based on your interpretation of the section of the Act.

So, unless it's clear-cut in the Act, like certain things are. In certain sections, it's very clear and obvious what this section means and what it says.

So that's my comment on this Issue #3.

Mr. Rouble: Thank you. Mr. Rody, do you want to comment?

Mr. Rody: I don't disagree with Robbie's point. We just believe that putting something in the Act isn't going to change that, because there's always going to be differing interpretations of the particular clause or a policy. When that happens, ultimately, that's resolved by the Appeal Tribunal; or, if the parties are still disagreeing, it will go to court.

I don't see anything that you could put in an Act that would say you can't have different interpretations of a policy. That's the reality.

Moving forward, quite frankly, the Policy Working Group, I think, is working hard at – you know, in the development phase of a policy, you're having input from stakeholders, so that, as they move forward, the policies that are coming forward, they're trying to make them as clear as possible, to eliminate the possibility of different interpretations.

Mr. Rouble: Thank you. Anyone else wish to comment on this? Hearing none, we'll continue on with Issue #5, "Mediation as an effective method for primary dispute resolution."

Mr. Rody: We don't see any need for a change in the legislation. It's already possible to do that now. If it was put into the Act, it would mean, quite frankly, that the Board is going to have to spend money training people on mediation. Mediation is not something that you just bring in anyone to mediate, and they solve something in five minutes. It doesn't work that way.

Mr. Rouble: Thank you.

Ms Babcock: Yukon Chamber supports no change to the legislation.

Mr. Sager: Whitehorse Chamber is in agreement.

Mr. Tuton: As are we.

Mr. Rouble: Any other comments? Continue on, then, with Issue #6, "Administration's standing at hearings."

Mr. Rody: This is another one that, when it first came forward, we had some very serious reservations, but, after discussions with the Board, we're prepared to consider some of their requests. Maybe I'll ask Valerie to elaborate on those discussions.

Ms Royle: The Board does not want to attend hearings to present positions or confrontational type of thing, to defend positions or present positions. What the Board would like standing, or limited or restricted standing, if you would, to be able to discuss jurisdictional clarification, if there is such an issue; to correct the record, if need be; and to insure procedural fairness. So that, if something comes up that is new evidence, to say "That's new evidence, we need to have a look at it." But absolutely not to go to defend the Board's decision. The decision stands on its own, it's been reviewed by a hearing officer, and certainly the Board does not want to get into that type of role because it's not appropriate at that level.

But to not be able to attend at all, if someone requests, limits our ability to insure that the record is correct and so on, and then, afterward, we're into a bit of a debate about, well, was this actually reviewed, was this new evidence that gets referred back to us but it's after the hearing has been conducted? And that's very frustrating.

So, what we're looking for is restricted standing at hearings, for the purpose of jurisdictional clarification, correcting the record, and insuring procedural fairness.

Mr. Dechkoff: Just a question… you mentioned new evidence, and if new evidence was brought forward, you would expect it to be brought back to the Board.

Ms Royle: Yes.

Mr. Dechkoff: Well, that's a little bit contrary to what we just talked about a little bit earlier. You mentioned that new evidence would not hold up the process; and yet you're saying, if new evidence is brought forward at the Appeal Tribunal, you would expect to hold up the process, and that it go back to you. That just seems to be a little bit of a contradiction.

Ms Royle: No, it's, I would say, complementary, because what we're hoping to do is, if there is new evidence, that the worker or employer would bring that forward to the Board during the period of time when you're waiting for a hearing to happen; and not come to a hearing and say, Well, here's the new evidence. The Board has no opportunity to respond. What would happen is, we would ask them to adjourn the hearing, and allow the Board the time to deal with the new evidence, and reschedule it again.

Mr. Dechkoff: So that is different than what you mentioned earlier.

Ms Royle: It would be, if the new evidence was presented at the hearing. Which is not procedurally fair to the process… for someone to come in at a later stage in a hearing, so it's gone through the adjudicator, it's gone through the hearing officer, and now, X months later, at the final level of appeal, there's new evidence that the Board has not considered before.

Mr. Rody: If there is new evidence in advance of the hearing, it should make sense that that evidence be brought to the Board's attention, because it's entirely possible that the issue can be settled to the worker's satisfaction without a hearing. We should do that in order to avoid the extra costs of the hearing. I mean, the worker still has the right to a hearing. If the Board doesn't accept the evidence, then it goes to the hearing.

Mr. Dechkoff: No, I was just getting clarity, because that did sound a little different than what you mentioned earlier.

Mr. Travill: And, correct the record… correct the Board's file?

Ms Royle: No, for example, the example that the Board had given was, in the middle of a hearing, the employer says, "Well, you know, the worker never attended to a physician." If nobody picks up on it, the Board, knowing the record, could say, "Well, on page 4 of the record, actually, the Worker's Report of Injury was filed." And, often, we find, later, that that was missed. Again, it's not usually when the Workers' Advocate office is attending, but when it's not. So there become opportunities to be able to say, "Well, actually, that's in the record. It's on page…" whatever, being more familiar with the record than the Appeal Panel would be.

Mr. Travill: And would you also envision the Board being present at the hearing officer appeals?

Ms Royle: No. No, because the hearing officer does the same review as the decision-maker does with the file in advance of the hearing. And, again, we're not suggesting that the decision-maker attend, because that's positional. I mean, we can say it's not positional, but if we send the person who made the decision, it automatically becomes a position, doesn't it? So we're suggesting that we would have a Board representative attend the hearing.

Mr. Travill: My only thoughts are that the hearing officer is the same as the Tribunal, and we could maybe resolve it quicker there.

Ms Royle: We haven't talked about that, but if that would be appropriate –

Mr. Travill: Because the hearing officer is a stand-alone, just the same as the Tribunal, from the rest of the organization.

Ms Royle: We hadn't discussed that, we were looking at the Appeal Panel hearings, but the same things could certainly apply.

Mr. Rody: So, again, we support what the Board's suggesting. Our fear was, initially, that they were going to go and argue the record; argue the case. That is clearly not something they are asking for, and whatever changes are made should reflect that; that that's not the purpose of the Board attending hearings, to defend the file.

Mr. Rouble: Mr. King.

Mr. King: I feel that the administration has two opportunities to review decisions that are made on a file; one at the adjudicative level; and, if it's appealed to the hearing officer, they can review the hearing officer's decision. The same information, if it is, without new information, goes to the Appeal Tribunal for a third hearing.

I agree with Mr. Rody when he says that, if there is some new evidence, that it goes right to the start, if the worker's going to present new evidence; or else, go back to the Board to present the new evidence to them, so they can view it and say they've changed their position because it changes the scope of things.

But, I mean, the administration has two opportunities to look at the decisions, and they have the opportunities to present their position to the adjudicator and to the hearing officer. So I stick with option number 1, "No change to legislation."

Mr. Rouble: Any other comments?

Mr. Dechkoff: You mentioned, earlier, regarding the issue of jurisdiction. How would you see the Board dealing with that, if there is a difference of opinion between the Appeal Tribunal, for example, and what you perceive as jurisdiction?

Ms Rouble: The Appeal Tribunal, in the middle of a hearing, would make the determination. All we're saying is that, if there is an issue of jurisdiction, the Board would raise it at that point. Obviously, the Board can't stop a hearing and say, "Well, you don't have the jurisdiction, so you can't hear this, let's go to court." The Tribunal would determine whether they continue or not. The Board would not be able to interfere in that process.

Mr. Travill: Picking up on that, then you'd have a situation where the Tribunal considered the very issue, with regard to jurisdiction, made a determination, after the Board had put their submission in, at that point, on that issue. Would we then say, Well, when it's been considered and decided by the Tribunal, that then removes the board of directors' ability to stay that portion of the decision? It's a little complex, but –

Ms Royle: It is a little bit complex, and we haven't worked through all of those situations. Because, what you'd have is, you'd have legislation that sets the parameters, and you'd have to have supporting policies that directed different situations.

The issue under appeal is not jurisdiction; right? The issue under appeal is, benefits were denied, or whatever the particular issue is, and that's the issue that the Board can stay.

Mr. Travill: But you see what I mean?

Ms Royle: Yes, I do.

Mr. Travill: I guess we need to work out a little more detail around this.

Ms Royle: Yes.

Mr. Travill: It was just something that came up, based on Ivan's questions.

Mr. Rouble: Any other comments?

Ms Babcock: The Yukon Chamber would support limited standing at appeal hearings.

Mr. Rouble: Mr. King, did you want to make a comment?

Mr. King: Is it not possible for the Board to submit their positions, in writing, before the hearing?

Mr. Travill: The long and the short of it… the Board controls the worker's file. The Board can put, virtually, what they choose on that file. The worker would have to object and try to have it removed through the process that's in place, so… the Board could do that, yes.

Mr. King: That's what I'm saying, is that they could present their positions without attending to the Tribunal hearing.

Mr. Travill: It would make it very difficult, because they'd have to guess at what was going to be presented. That's why some of those things, proactive, become very difficult to do in reality.

Mr. King: Well, it was tried before. At one time, the Board had their lawyer, or something, sitting in on these hearings; is that not right?

Mr. Travill: The legislation didn't allow that to happen, but it did happen.

Mr. Tuton: The difference, though, is this is limited standing, instead of full standing. We're not asking for full standing. We understand where the Board's position is.

Mr. Rody: Robbie, the Board has made it clear to us that they're not seeking the opportunity to present arguments, to present the file again. They're not going to be there to defend the file.

Mr. Rouble: Can we continue on to Issue #7? Issue #7, "Jurisdiction of Appeal Tribunal". Also related to this issue is Issue #8, "Employer's appeal process."

Ms Babcock: Yukon Chamber supports no change in this area. We are satisfied with the current processes in place.

Mr. Sager: Whitehorse Chamber sees no need to change.

Mr. Rody: We agree with that; no change needed.

Mr. Tuton: As do we.

Mr. Rouble: Any additional comments on 7 or 8? Hearing none, we'll continue with Issue #9, "Application to the Supreme Court."

Mr. Rody: This is something that the Workers' Task Force brought forward. We were initially in discussions, but we dropped the issue. To the extent that Labour wants to be able to take something to the Supreme Court, we are not looking for that right. However, there has been a suggestion, and I think it's a good one, that section 26(1), about determining whether a policy established by the Board is consistent with the Act… it's probably a good idea that either of those two should also be able to take a decision of the Tribunal to the Court, to appeal that. That, after all, is what the Court is supposed to be there for.

Mr. Dechkoff: Say that again?

Mr. Rody: Well, the way this is written right now, it's just a policy. In fact, I think the Workers' Advocate and the Board have been to court before on, essentially, items in the Act, and it should be spelled out, there, that the Appeal Tribunal and the Board both have the ability to appeal a decision of the Tribunal, itself, to the Court.

Mr. Travill: Well, the Tribunal, theoretically, wouldn't appeal their own decision, because they have the ability to review it, on their own, under their own. So it would be giving the Board the ability to appeal the Tribunal's decision to the Court.

Mr. Rody: But I just want to be clear, we're not pursuing the idea that we should be able to bring things to the Supreme Court.

Mr. Rouble: Any other comments?

Ms Babcock: Yukon Chamber would support amending the Act to include the Board being able to appeal hearings through the court system.

Mr. Sager: Whitehorse Chamber concurs.

Mr. Tuton: As do we.

Mr. Rouble: Mr. King?

Mr. King: I support option number 3, "Add legislation that provides for workers… to apply to the Supreme Court…", because they're stakeholders, as are the Board and as are the employers. I think that

should be clear that, if a worker decides to take a policy to the Supreme Court, at least he has the option to do so.

Mr. Rouble: Any other comments? Issue #10, "Standing at assessment hearings."

Mr. Rody: This is also something the workers brought forward, and it's not something we want to pursue. I think the reason we raised it, we simply wanted to send the message that we have an interest in assessments as well. And I think the employers, in our discussions with the employers, they're aware of that. We don't see a need to change the legislation.

Ms Babcock: The Yukon Chamber would not like to see any change to the legislation.

Mr. Sager: Nor would the Whitehorse Chamber.

Mr. Tuton: We concur with that.

Mr. Rouble: Any other comments? Issue #11, "Annual reporting of Worker's Advocate."

Ms Babcock: We did review this matter quite closely, and the options set out, we feel, did not add any value or strength, in the legislation, to address the concerns that we brought forward on this issue.

One of the options that wasn't laid out (we had another one, that we do have concerns with the cost of the Workers' Advocate office), was that we would like to see the Minister of Justice prepare the budget, for approval, in conjunction with the Board. Ultimately, the Board is responsible for the fiduciary health of the system, and currently they have no control, whatsoever, over this budget item. We would like to see them have some control, and work with Justice in the approval of the budget, because, ultimately, it impacts the fund.

Mr. Karp: Mr. Chair, there is another issue that deals with the Workers' Advocate office… Issue #38/39. On page 142, section 13(5) states, in the Act, "The Minister of Justice shall prepare an annual budget for the workers' advocate [office] and, following consultation with the board, approve the budget, which shall be paid out of the compensation fund." So, for some reason, it seems that this part of the Act has been not used, not implemented, whatever.

I come back to the Yukon Chamber's comment about the cost of the Workers' Advocate office, and if we look at the rest of the country, per covered worker, there's an allocation of cost. Across the country, each worker, that is in the

Province of Alberta, it costs the system $1.01, for each worker in British Columbia, it's $2.54, for the Workers' Advocate office.

And something that's similar in size to the Yukon (well, as close as we can get), let's say Prince Edward Island, which has just under 70,000 workers, as opposed to our 14,642, the cost is $1.91 per worker. In the Yukon, that 14,642 workers, the cost is $25.68 per worker. This is a concern to us, Mr. Chair.

Mr. Rouble: We will be coming back to Issues #38 and 39 at our next meeting, where we'll have an opportunity to discuss this in much more detail. I do appreciate your comments, though.

Were there any comments about the structure or type of information to be included in the annual report?

Mr. Sager: Just as a general comment, the Whitehorse Chamber is concerned about this budget, and feels it requires greater scrutiny.

Mr. Rouble: Any other comments on this issue?

Mr. Tuton: I think the only other comment to make is, we envision, in the process, with the Department of Justice and the Board agreeing upon a budget, that if, for some reason, those parties could not agree within a certain timeframe, perhaps 30 days, that it would go to binding arbitration… something like that.

Ms Royle: The issue of what's included in the reporting wasn't felt to be a legislative one, to specifically answer that issue. It's more procedural, and to legislate it doesn't make a lot of sense.

Mr. Rody: We support that.

Mr. Rouble: Moving on to Issue #12, "Annual reporting of the Appeal Tribunal, Workers' Advocate and Employer Consultant."

Mr. Rody: I guess, at first blush, some people might see that this is important, to table it in the Legislature, but both those reports are widely available now. The concern is, once the report is done, and passed to the minister, that's usually when it's released in the public. If you include a requirement to table it in the Leg., that's going to delay the release to the public further. We just don't see the advantage of tabling the report in the Leg. (I mean, that's just a formality), so we're suggesting no change to the legislation.

Mr. Sager: Whitehorse Chamber agrees.

Ms Babcock: Yukon Chamber supports that as well.

Mr. Tuton: As do we

Mr. Rouble: Any other comments on Issue #12? Hearing none, we'll continue on with Issue #13, "Board's notice to employers of a claim for compensation."

Mr. Rody: I note, in the previous book, this was brought to the attention of the Board by the Public Service Commission (I don't know if they want to comment), but we don't see a need to change the legislation. It's actually the employer who is supposed to be notifying the Board of an injury, so the employer should be well aware of the fact that there is an injury and a claim.

Ms Babcock: Yukon Chamber supports no change to the legislation.

Mr. Sager: Whitehorse Chamber supports no change.

Mr. Tuton: As do we.

Mr. Rouble: Any other comments?

Mr. Karp: Just one. I believe that there is a responsibility not just of the employer to make representation that there has been an incident, but also of the worker. In section 9(1), it requires the worker, as well, to make note of an incident in the workplace.

Mr. Rouble: Okay, Issue #14, "Processes for release of claims information." Related to this is Issue #15, "Access to claim file – (documents in respect of their claim)."

Mr. Rody: I think it was our group that brought forward the second one, and we're satisfied that this can be addressed in policy. It's not necessarily something that needs to be changed in legislation.

Our concern was that if, for example, the Board is doing an investigation, and there is some surveillance of a worker, that worker should be aware of it. If there is videotape evidence, the worker should know about it and be able to view it. And I think we're satisfied that the Board can address that in policy.

The other issue is a little more complicated. Just to take your researcher's example, on page 101, where it says, "In the worst case scenario: - the employer

requests access to the claim file; - the worker objects and is notified of the request and objects to the employer having access; - the President reviews the material and agrees with the objection…", that's, supposedly the worst case.

That's actually not the worst case scenario. The worst case scenario is when the employer requests the file; the president views it and agrees to give the employer the file, over the worker's objection; then it gets to the Appeal Tribunal, and the Tribunal says, "Well, the employer should not have got...." Well, that's too late, at that point.

So, what we're suggesting is that the president's decision, under 27(4), be appealable to the Tribunal. If the president says to the employer, "No, you can't have the file", or, "You can't have parts of the file", the employer can appeal that. By the same token, if the president says, "Yes, you can have the entire file", and the worker has objected to certain portions, that that decision be appealable to the Tribunal prior to the employer getting the file. Because, having the Appeal Tribunal say the president shouldn't have released it, doesn't do the worker much good.

Mr. Travill: And a direct appeal to the Tribunal under section 8, I think it is.

Mr. Rody: Yes. And, by the way, we absolutely do not think that, under any circumstances, that a Board officer should have the ability to withhold information that they consider detrimental to the worker (you know, the medical file). Absolutely not. That's very paternalistic. That was one of the options.

Mr. Travill: The reason for that option is because of psychological problems and things like that. In the other jurisdictions that do that, they allow for the information to be turned over to the worker's doctor, who, then, can make that determination.

Mr. Rody: I don't think the Board should be able to withhold information. I mean, how they transmit it to the worker is one thing, but withholding it….

Ms Royle: I think the issue there is that the Yukon is unique in that regard, with respect to lack of family physicians. Many of the workers don't have somebody that you can use, and so that was probably the greater – normally, we would use the doctor or psychiatrist, or somebody else, to break that kind of news.

Ms Babcock: Yukon Chamber supports no change to the legislation; there may be instances where privacy is in the best interest of the worker.

Mr. Rody: But, what about appealing the –

Ms Babcock: And, absolutely, for the appeal, it's –

Mr. Rody: To appeal the president's decision… you support that?

Ms Babcock: Yes.

Mr. Rody: Yes, okay.

Mr. Rouble: Any other discussion?

Mr. Tuton: We support that as well.

Mr. Karp: If the president makes a decision, and the file is opened, let's say to an employer or employee, and it's after the fact that you're appealing, the damage is already done.

Mr. Rody: That's what we're saying.

Ms Babcock: That's what we're saying.

Mr. Karp: So you're saying, change it to make the notifying first, that the file will become open, and then the appeal process?

Mr. Rody: Right now, the president, under 27(4), makes the decision as to whether or not to release any or all of the worker's file to the employer. If the president makes a decision that gives the entire file to the employer, and it goes to the Appeal Tribunal, and the Appeal Tribunal says the president should not have done that, that's too late; because, at that point, the employer has the file.

We're saying the decision of the president, on what parts of the worker's file are to be released, should be appealable before the employer gets the file.

Mr. Dechkoff: Just for clarity, currently the process is that, if the president decides to produce some documents out of an injured worker's file, that is typically sent to the injured worker, or the Workers' Advocate, to review prior to the release to the employer.

Mr. Travill: No, once the president makes the decision, that's it; it goes. And then we can review that decision at the Tribunal, but it's already in the employer's hands.

Mr. Dechkoff: But, at this point in time, as the Workers' Advocate, do you not get a chance to review the document first?

Mr. Travill: Not the president's decision. The president makes a decision, and the documents go out.

Mr. Tuton: We support that as well.

Mr. Rouble: Mr. King?

Mr. King: Just to clarify, these are documents that are relevant to the appeal. Mr. Karp talked about the file being available to the employer… it's not the entire file, it's just documents that are in respect to the appeal.

Number two is that there is no provision, anywhere, for – like, after these documents are released to the employer, what happens to them? I mean, do they sit on his coffee table; or what? My ex-employer receives 25 documents out of my file, regarding my appeal… who knows where they go?

So there is nothing to protect the worker's confidentiality once they're out of the building and in the employer's hands. And I think there's a problem with that, that's got to be dealt with.

Mr. Travill: There is a clause that says that they can only use them for the purposes of the appeal; and then they're subject to a penalty if they use it other than that. But there is no discussion about how they're disposed of, or anything like that.

Mr. King: Well, shouldn't they be sent back to the Board after the appeal?

Mr. Travill: We hadn't contemplated that, and it hadn't been raised to us.

Mr. King: Well, I raise it now, then. Once the appeal is over, the documents should be returned, uncopied; you know, stamped, "Not for copying", when they're sent to the employer. And, once the appeal is over, the documents are finished with by the employer… back to the Board.

Mr. Travill: Okay, we've heard you, is all I can say. We'll have to do some thinking on this.

Mr. Rody: What is the clause on confidentiality?

Mr. Travill: Twenty-seven.

Mr. Rouble: Are we ready to continue? Issue #16, "Implementation of Appeal Tribunal decision – timeframe for."

Mr. Rody: We don't see a need for a change to the legislation.

Mr. Sager: Whitehorse Chamber feels there is no need for a change.

Ms Babcock: Yukon Chamber doesn't see any need for a change.

Mr. Tuton: Nor do we.

Mr. Rouble: Any other comments? Issue #17, "Term 'Adjudicator' in legislation."

Mr. Rody: In the previous Issues binder, there was an analysis, and they said, rather than "board officer", their suggestion is simply "Board". When we mean "board of directors", let's specify "board of directors"; then just "Board" would cover all of the administration.

Mr. Sager: Whitehorse Chamber supports that.

Ms Babcock: Yukon Chamber supports that.

Mr. Tuton: As do we.

Mr. Rouble: Any other comments? Issue #18, "Choice of gender of medical consultant."

Mr. Rody: Yes, we brought this up, and I think there was some miscommunication with regard to what we meant. And this is what happens when we sometimes use terms that are actually in the Act. We're not suggesting that the Board have a male and a female medical consultant. We're not referring to the Board's employee, in this case. What we're referring to is, specifically, when an employee has to undergo an examination, there's a clause in here about an independent examination, that they be allowed a choice of gender for that purpose. And, after we explained that issue to the Board, I think they're quite willing to accommodate us in policy, wherever possible.

Sometimes there are not very many of a particular group of specialists around, and you may not be able to get your gender choice. But, where possible, we're

satisfied that the Board will accommodate our request in policy, so we don't see a need to change the legislation.

Ms Babcock: Yukon Chamber supports no change.

Mr. Sager: Whitehorse Chamber agrees.

Mr. Tuton: As do we.

Mr. Rouble: Any other comments on Issue #18? Okay, continue on with Issue #19, "Board's ability to seek clarification of Appeal Tribunal decisions."

Mr. Rody: We don't see a need to change the legislation.

Ms Babcock: Yukon Chamber sees no need for change.

Mr. Sager: No need for change.

Mr. Tuton: We agree.

Mr. Rouble: Any other comments? Continuing on with Issue #20, "Return to work and employer's obligation to re-employ."

Mr. Rody: This is a big issue, yes.

Ms Babcock: Huge issue. We talked about it at length, and we would like to present some options, but at a later date. We're not adequately prepared to present options today.

Mr. Rody: In principle, we were prepared to come forward with some specifics on return to work, and duty to cooperate, duty to accommodate, that sort of thing, but this is really a critical issue, particularly when we have one of the highest average length of claim in the country, and it's important, I think, for the stakeholders and the Board to sit down and work out what will work in this territory.

With that in mind, I realize, in your report, you're simply going to forward recommendations for specific changes, but that you would not necessarily be involved in the drafting. This, to us, is way too important to leave to a lawyer to draft. What we are requesting is that you would forward the recommendation that the stakeholders be involved in drafting any changes; particularly this but, quite frankly, any of the changes that are going to be made. That's what was done last time, and it worked fairly well. So we're requesting that you forward

that recommendation that, when the time comes to actually draft the changes to the legislation, that the stakeholders be involved.

Mr. Karp: The Whitehorse Chamber agrees that this is a very significant issue, and could have serious ramifications down the road. We do have some concerns about the right to accommodate, but that's why we need the time to evaluate this and come up with a reasonable submission to the Panel.

Ms Babcock: And in our discussions, we would also respectfully request that there be an extension to the June 15th date, on this specific item.

Mr. Rody: Given the number of things that we have to get together on, what we're asking is that you consider extending it to June 30th.

Mr. Rouble: Okay, let me confer with the Panel before we respond on this one.

Mr. Rody: Well, you don't have to answer us right now.

Mr. Tuton: Before you take it into consideration, I think it's very important to add, here, that the Board has worked extremely hard, over the last year, to better the relations with our stakeholders, and this particular issue is one that will have far-reaching ramifications to the Board and to the fund and to the stakeholders. If we are not able to reach a common understanding, it will create problems for everyone. We all, as partners, recognize the importance of that, and we just wish to take the time that is needed, and we feel that the two weeks would be –

Mr. Rouble: Okay, the Panel can certainly appreciate that. Are there any other comments on this issue?

Issue #21, "Uses of 'deeming'."

Mr. Rody: We don't see a need to change the legislation. I know this is actually a requirement of the Act; however, we feel that the voc. rehab. policy, that's already been done, and what we're hoping to do with return to work, will address this.

Mr. Rouble: Other comments?

Ms Babcock: Yukon Chamber does not consider this to be a legislative issue, but a policy matter.

Mr. Sager: Whitehorse Chamber agrees; it's a policy issue.

Mr. Tuton: As does the Board.

Mr. Rouble: Any other comments? Issue #22, "Reimbursement of compensation payments to employers and other insurers."

Mr. Rody: This is a fairly big issue for us. Our concern is that some employers, and, to be quite frank, the hospital and the government are two where it's happened in the past, end up being the beneficiary of workers' benefits. What happens is this: someone is working, their position is half time, but they're regularly working, instead of 20 hours a week, they're regularly working 30 hours a week, month after month, year in, year out. They get injured. Workers' Compensation calculates their benefits based on their income, which is 30 hours a week, at whatever their pay is.

If the arrangement is to pay it to the employer, what quite often happens is that the employer then pays the worker at their half time rate of pay. So the worker is essentially out of pocket by 10 hours a week. That's the problem.

So, what we need to do is have something in section 39 that says that the employer shall pay at least that amount to the worker. Whatever it is the Board is giving to the employer, that has to flow through to the worker.

Ms Babcock: Yukon Chamber of Commerce would support that position. It is under the jurisdiction of the Board to determine what the weekly earnings of pay will be, and we would fully expect that, if the payments are directed to the employer, the employer would pay the amount received, from Workers' Compensation, to the employee.

Mr. Sager: Whitehorse Chamber supports that as well.

Mr. Tuton: As does the Board.

Ms Royle: Before we move off that issue, there was one other change with respect to reimbursement of payments. This is under section 97, which basically says a worker can't sign away their benefits… which is a standard tenet of the *Workers' Compensation Act*.

What the Board has found, though, is that, in some instances, where the worker has an insurance company that may be involved, the insurance company will not pay out the worker's claim without something from the Board. And so the worker is coming, asking the Board to pay the benefit over to the insurance company, so

they can straighten things away, or what have you, because the Board can't do it because section 97 does not allow the worker to assign.

I'm not sure what the wording would be, and we'd really have to research it a lot, to make sure we were really tight, because I firmly believe workers should not be able to assign away their benefits because it's a basic right of the system; but if the benefits to the worker is holding up their own insurance or something like that – we've had some cases where it's been very problematic for the worker, because we cannot, by legislation, do that.

So we're recommending some change to section 97, where the worker could authorize the Board to pay to, say, an insurance company, but we'd need really tight wording and I don't know what that is at the moment.

Mr. Rody: We support that.

Ms Babcock: Yukon Chamber would support that as well.

Mr. Sager: Whitehorse Chamber is in agreement with that.

Mr. Rouble: Any additional comments? Issue #23, "Claims management."

Mr. Rody: Don't see any need for changing the legislation.

Ms Babcock: Yukon Chamber would not like to see any change.

Mr. Sager: Whitehorse Chamber sees no need for a change.

Mr. Tuton: We agree.

Mr. Rouble: Any other comments? Okay, Issue #24, "Definition of initial treatment site."

Ms Babcock: Yukon Chamber would not like to see any change to the legislation; however, we do see a need for improved communication and education to the employer community, to tell them what their responsibilities are with regard to "site of injury"… that they do have obligations. There is a perception out there that not all employers are aware of that. But we don't see it as a legislative issue; it's an education issue.

Mr. Rouble: Any other comments?

Mr. Sager: Whitehorse Chamber supports that.

Mr. Rody: We support that as well. We don't see any need for changes in the legislation.

Mr. Tuton: As do we.

Mr. Rouble: Well, folks, that concludes Issues 1 through 24. I'd like to thank you very much for your hard work that obviously went into preparing your comments prior to this meeting.

Does anyone wish to make any closing comments?

Mr. Tuton: Just a reminder to everybody to be involved with the Annual Day of Mourning. We expect to see a great turnout on the 28th of April, in the main foyer of the YTG building.

Mr. Rouble: Well, if there are no other comments, we will adjourn.

(Meeting adjourned at 2:10 p.m.)